

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 2204 of 1999

DATE OF DECISION: 20.8.2007

Ravinder Singh and others

...Petitioners

Versus

Mandir Bhajley Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

Present: Mr. M.L. Sarin, Senior Advocate, with
Mr. D.B. Singh, Advocate,
for the petitioners.

Mr. V.K. Jain, Senior Advocate, with
Mr. Parshant Vashishth, Advocate,
for the respondent.

JUDGMENT

M.M. KUMAR, J.

This is tenant's petition filed under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, challenging order of reversal dated 11.3.1999, passed by the learned Appellate Authority directing his ejectment on the ground that demised premises have been rendered unsafe and unfit for human habitation. The findings recorded by the Rent Controller on the issue as to whether the demised premises have been rendered unsafe and unfit for human habitation, are reversed by the learned Appellate Authority.

FACTS:**A. Earlier ejectment petition filed in 1983**

The landlord-respondent on 3.9.1983 filed an ejectment application, bearing case No. 92R of 1983 before the learned Rent Controller, Jagadhari. The landlord-respondent had taken various grounds of ejectment, namely, non-payment of rent, change of user from grass cutting to that of a factory and that the demised premises have become unfit and unsafe for human habitation. The application was dismissed by the Rent Controller on 7.8.1990 (Ex. R-3). On all the issues the Rent Controller had recorded the finding against the landlord-respondent by holding that the rate of rent was Rs. 20/- per month, there was no change of user and the demised premises were not unfit and unsafe for human habitation. The order passed by the Rent Controller was upheld by the Appellate Authority who dismissed the appeal filed by the landlord-respondent on 5.11.1992 (Ex. R-4). Against the order of the Appellate Authority a Civil Revision bearing C.R. No. 722 of 1993, was filed before this Court which on 4.7.2007 has been dismissed as withdrawn on the statement made by the learned counsel for the landlord-respondent to the effect that in view of the subsequent ejectment application filed against the tenant-petitioner, which has been allowed, the revision petition was rendered infructuous.

B. The subsequent ejectment petition of 1988 relevant to the instant Revision Petition

The ejectment application in the present case was filed on 14.12.1988 before the Rent Controller, being Rent Case No. 90 of 1988. It is obvious that the earlier application filed in 1983 and decided by the Rent Controller on 7.8.1990, was pending although a period of about 5 years had elapsed. The landlord-respondent has again pleaded the aforementioned three grounds of non-payment of rent, change of user and that the building has become unfit and unsafe for human habitation. The application was again dismissed by the Rent Controller on 11.1.1997, holding that the rate of rent was Rs. 20/- per month as has been held in the earlier rent case No. 92R of 1983 and the tender made by the tenant-petitioner at the aforementioned rate along with interest and cost was not short. Therefore, the first ground of ejectment was repelled. The Rent Controller further found that there was no change of user after recording a categorical finding that no document was produced to prove that the shop was actually taken on rent for grass cutting. As no rent note was produced nor any oral evidence was brought before the Court to show that the premises in question was taken on rent for grass cutting and that there was no bar on the part of the tenant-petitioner to install his factory in the demised premises, the second ground of ejectment was also rejected. The other ground

of ejectment that the building has become unfit and unsafe for human habitation, was also rejected by the Rent Controller by observing as under:-

“17. While arguing on this point learned counsel for the respondent took the plea that after the visit of Shri D.B. Gaur, Executive Engineer Shri Hem Chand Goel has also inspected the shop and his report is Ex. R1 on this file and the site plan prepared by him is Ex. R2 on the file and as per his statement as RW1 before the court the building is quite safe and fit for human habitation. So, the findings on this issue be returned against the petitioner.

18. as at this stage there are two different reports before the court i.e. one of Shri D.B. Gaur Ex. A2 and other of Shri Hem Chand Goel as Ex. R1 on the file but during the cross-examination of Shri D.B. Gaur it has come that technicalities of the building is prime factor for assessing the condition of the building but in his report Ex. A2 Shri D.B. Gaur Executive Engineer has not examined technical aspect of the building as admitted by him. Moreso, earlier he had inspected the building in 1985 and at that time he had reported that the building was fit for human habitation and the same was safe. The report of Shri D.B. Gaur, Executive Engineer is not based on facts and he has given

simple report that the same is unfit and unsafe whereas Shri Hem Chand Goel has given the complete report and reasoning that how the building is fit and safe and he has also prepared site plan alongwith his report. Moreover, law was laid down by our Hon'ble High Court in case Sohan Lal Vs. Amar Nath and others 1992(1) R.L.R. 277 that if in the report there is nothing to suggest sagging of foundation and walls going out of plumb report on the basis of age of building only, cannot be inferred that the building has become unsafe and unfit for human habitation. Similarly in the report of Shri D.B. Gaur learned local commissioner Ex. A2 there is no such mention that there is sagging of foundation and walls going out of plumb and the said report is also on the age of building only and as such I agree with the report of Shri Hem Chand Goel, expert witness in this case and does not believe the report of Shri D.B. Gaur, Executive Engineer and on the basis of report of Shri Hem Chand Goel, Ex. R1 I am of the view that petitioner has not been able to prove that shop is unsafe and unfit for human habitation and this issue is decided against the petitioner."

It is appropriate to mention that the report of the expert Shri D.B. Gaur, Executive Engineer(Ex. R-1), was disbelieved wherein he has opined that the building had

become unfit and unsafe for human habitation, whereas the other report submitted by Shri Hem Chand Goel that the building was safe and fit for human habitation was accepted.

The order passed by the Rent Controller was challenged by the landlord-respondent before the learned Appellate Authority under Section 15(2) of the Act. The tenant-petitioner moved an application for amendment of the written statement filed before the Rent Controller to raise a specific plea that the subsequent ejectment application filed by the landlord-respondent being Rent Case No. 90 of 1988 was not maintainable as principles of *res judicata* were applicable because on the earlier occasion Rent Case No. 92R of 1983, was dismissed on 7.8.1990 (Ex. R3), wherein the landlord-respondent had taken the same plea for ejectment of the tenant-petitioner. The application was allowed and the written statement was accordingly permitted to be amended. On the application filed by the landlord-respondent, learned Appellate Authority appointed one Shri Jora Singh, Advocate, as Local Commissioner for determining as to whether the building had become unfit and unsafe for human habitation. Shri Jora Singh, Advocate, submitted his report dated 26.9.1987 and the Appellate Authority placing reliance on the report of the Local Commissioner Shri Jora Singh, Advocate, reversed the finding concerning the question as to whether the building has become unsafe and unfit for human habitation. The findings of the Appellate Authority in that regard are available in paras 13 to 16 and the relevant portions are extracted as under:-

“ It comes out from a combined reading of the report of Executive Engineer Ex. A.2 and the report of Local Commission dated 26.9.1997 that the premises are substantially in damaged condition except two rooms out of the twelve rooms in all. Those are in dilapidated condition and have been rightly declared as unsafe for human habitation in totality by the Executive Engineer.

The report Ex. R-1 of Hem Chand Goel, Registered Engineer, Municipal Committee Jagadhri, has been given undue weight by learned Rent Controller. After mentioning the materials used in the rooms and tin sheds Mr. Goel also drew a general conclusion that the building is safe and sound and fit for human habitation without mentioning the cracks or holes in the walls and roofs and the general condition of the roof, the tin sheets and the walls of various rooms. Then he is a private Engineer who generally favours the party engaging him. So no reliance can be placed upon his report in comparison to the report Ex. A-2 of the Executive Engineer, P.W.D. (B&R) and the report of Shri Jora Singh Chahal, Advocate, who was appointed as Local Commission by the Appellate Authority.

xxx	xxx	xxx	xxx	xxx
	xxx	xxx	xxx	xxx

In view of the observations made in the above cited authorities, the premises can be safely declared to have become unsafe and unfit for human habitation when half the roof of one of the rooms has already fallen down, the cracks have appeared in the walls from top to the bottom, some of the rafters are bulging down and there are big holes in the iron sheets of the tin-sheds and most of the rooms are substantially damaged except two rooms which inspite of cracks in their walls have been described to be in god condition. The report of the Local Commission seems to be fair as he has described the condition of rooms no. 10 and 11 of the premises to be good inspite of cracks in one wall of room no. 10 and two walls of room no. 11. As per that report, the premises are in damaged condition and in bad shape. His report finds ample corroboration from the report of Executive Engineer Ex. A.2.

xxx	xxx	xxx	xxx	xxx
	xxx	xxx	xxx	xxx

After going through the aforesaid authorities I do not find myself in agreement with the respondent's counsel because the condition of the building mentioned in the above cited authorities is distinguishable from the condition of the premises in question. The premises in question consist of

twelve rooms out of which two rooms inspite of cracks in the walls have been described by the Local Commission to be in good condition and all the remaining rooms were found to be in damaged condition ether on account of the cracks in the walls or the holes of big sizes in the roofs and tin-sheds or the bulging down of the rafters or the falling of roof. Then the report of expert is very much material in this case when he has given the details of the condition of all the rooms and that report stands corroborated by the report Ex. A-2 of an expert i.e. the Executive Engineer.

16. Had the report of Local Commission Shri Zora Singh, Advocate, been available with learned Rent Controller, the finding of issue no. 2 might have been different. The report of Local Commission coupled with report Ex. A-2 is sufficient to hold that the demised premises have become unsafe and unfit for human habitation. So the finding of learned Rent Controller on issue no. 2 is reversed.”

In respect of the newly added plea of *res judicata* raised by the tenant-petitioner, the learned Appellate Authority has held as under:-

“.....No such plea of estoppel is available to the tenant in this case when the second application for ejectment has been filed on the ground that the building had become unsafe and unfit for human

habitation. The relationship of landlord and tenant is settled once for all and since the rent claimed by the landlord in the abovesaid case had been tendered in the subsequent application, the ejectment on the ground of non-payment of rent was no more available. But as the condition of a building goes on worsening day by day, the fresh application in the changed circumstances on the ground of the building having become unsafe and unfit for human habitation is very much maintainable. A fresh application for eviction on the same ground was held to be not barred by the provisions of section 14 of the Act in view of the change in the circumstances.”

The Appellate Authority also went on to hold that the tenant-petitioner did not make any effort by moving an appropriate application under Section 10 CPC seeking stay of the proceedings in the subsequent application bearing Rent Case No. 90 of 1988. It was on the basis of these findings and circumstances that the learned Appellate Authority ordered ejectment of the tenant-petitioner.

The tenant-petitioner then filed the instant revision petition. This Court on 11.5.1999 has since stayed dispossession of the tenants-petitioner. Thereafter an application under Section 15(6) read with Section 151 CPC, was filed by the landlord-respondent, being C.M. No. 2283-CII of 2003, in which prayer was made by the landlord-respondent

that a Local Commissioner may be appointed at its expenses to ascertain the existing position of the demised premises. The aforementioned application was decided after hearing learned counsel for the parties on 24.9.2003 and the Executive Engineer, PWD (B&R), Yamunanagar, was appointed as Local Commissioner. It would be necessary to notice the operative part of the order dated 24.9.2003, which reads as under:-

“ I have heard learned counsel representing the parties and examined the records of the case. It is too well settled that subsequent development that might take place either during the pendency of the appeal or revision, can be taken into consideration. If the condition of the building be as described in the application, surely, same will have a great bearing upon the ultimate decision in this case. It is significant to mention that even the respondents are disputing the authenticity of the report given by the Local Commissioner appointed by learned Appellate Authority and if that be so, there is an additional ground for appointing Local Commissioner afresh, which will also remove the primary objection raised by the petitioners that Mr. Zora Singh, Advocate, who was appointed as Local Commissioner, was not a Building Expert, as, if now an order is to be passed for appointment of Local Commissioner, that would certainly be of a Building Expert.

In view of the discussion made above, this Court is of the view that the application, in hand, deserves to be allowed. As mentioned above, subsequent developments can always be taken into consideration and I may mention here that there is a time lag of three years between when the first Local Commissioner was appointed by learned Appellate Authority and now, when the order is going to be passed for appointment of Local Commissioner. The Court otherwise also finds it necessary to appoint Local Commissioner so as to effectively adjudicate the controversy involved in this case which, as mentioned above, pertains to the condition of the building. The application in hand is, thus, allowed.

The Executive Engineer, PWD (B&R), who may presently be posted at Yamunanagar, is appointed as Local Commissioner, who would inspect the demised premises after issuing notice to the concerned parties or the counsel representing them or both and would visit the premises in the presence of concerned parties or their representatives and then submit a report with regard to the exact condition of the building in dispute.”

The Executive Engineer was to submit his report within a period of three months commencing from 24.9.2003.

On 20.12.2003, he sought extension of time for submission of report although he had claimed to have inspected the premises on 20.12.2003. The report eventually was submitted by him on 15.4.2004.

The tenant-petitioner has filed detailed objections to the report of the Executive Engineer by submitting that the report was nothing else but the replica of the application filed by the landlord-respondent. It was also pointed out that the Executive Engineer did not stay at the premises for more than 15 minutes, which was not sufficient for him to form an opinion as to whether the demised premises has outlived its utility for being fit and safe for human habitation. It was further pointed out that the report shows complete lack of application of mind and is perfunctory in nature.

Mr. M.L. Sarin, learned senior counsel for the tenant-petitioner has submitted that the principle of *res judicata* would be attracted to the facts and circumstances of the present case because the earlier application filed by the landlord-respondent being Rent Case No. 92R of 1983, was dismissed on 7.8.1990 (Ex. R-3) and all the issues were decided against the landlord-respondent. In that regard, learned counsel has drawn my attention to the provisions of Section 14 and argued that once it is established that the application filed by the landlord-respondent on the same cause of action in respect of the same property has earlier been dismissed then the later application has to be dismissed summarily. In support of his submission, learned counsel has

placed reliance on para 3 of the judgment of this Court in the case of **Karam Chand v. Ram Parkash, 1981 (2) RCR 299**. Learned counsel has also submitted that the landlord-respondent did not plead any new circumstance in the second application to substantiate that the demised premises were rendered unfit and unsafe. In the absence of pleading regarding change of circumstances the principle of *res judicata* would be fully applicable as has been held by this Court in **Ghanisham Dass v. Sobha Singh, 1981(1)RLR 294**. With regard to the withdrawal of Civil Revision No. 722 of 1993 on 4.7.2007 by the landlord-respondent, learned counsel has submitted that the findings recorded by both the Courts below, which were subject matter of challenge in C.R. No. 722 of 1993, have attained finality and would remain intact as has been held by this Court on the basis of Order XXIII Rule 1 in the case of **Girdhari Lal v. Sewa Ram, 2002 (2) PLR 358**. It has also been pointed out that the later ejectment application from which the preset petition has arisen must be regarded as mala fide because the landlord-respondent had claimed rent @ Rs. 300/- per month and there was no other motive for the landlord-respondent to file a second application.

Mr. Sarin has then argued that an advocate who has no knowledge of civil engineering, cannot be regarded as an Expert and, therefore, no reliance could have been placed by the Appellate Authority on the expert report submitted by Shri Jora Singh, Advocate. He has pointed out that the landlord-respondent itself was not satisfied with the report

submitted by Shri Jora Singh, Advocate, as is clear from the order dated 24.9.2003, passed by this Court on the application filed by the landlord-respondent. In support of his submission, learned counsel has placed reliance on the observation made by this Court in para 15 of the judgment rendered in the cases of **Jita Ram v. Sham Lal, 1993(1) PLR 291** and **Nand Kishore v. Ved Parkash, 1999(1) All India RCJ 633**. Learned counsel has pointed out that collapsing of one room alone is not sufficient to order ejectment as has been held by Hon'ble the Supreme Court in the case of **Piara Lal v. Kewal Krishan Chopra, 1988 (2) RCR 32**. He has further pointed out that cracks are also not sufficient to conclude that the building has become unfit and unsafe for human habitation, as has been held by this Court in the case of **Pitamber Lal v. Ram Lal, 1984(2) RLR 491**.

Mr. V.K. Jain, learned Senior counsel appearing for the landlord-respondent has pointed out at the outset that the demised premises were taken on rent by the father of Ravinder Singh in the year 1949 as has been admitted by Tarminder Singh, RW-2 in the statement made before the Rent Controller. According to the learned counsel, the tenant-petitioners have enjoyed possession of the property for about 38 years at a meagre rent. The first application for ejectment bearing case No. 92R of 1983 was filed before the learned Rent Controller, Jagadhari on 3.9.1983. It was five years thereafter and during the pendency of the first application that another application was filed on 14.12.1988, which has led to

filing of the present petition. There is a gap of more than 5 years and the other ejectment petition was filed because the condition of the building has further significantly deteriorated. Learned counsel has placed reliance on the report of the expert Sh. Hemchand Goel, which was submitted before the Rent Controller to show that shed marked as 1 and 2 on the eastern side of the site plan were built in mud mortar and cement painted, C.G.I sheet roof on M.S. Angle Iron Purlins over Steel trusses. He then refers to the rooms marked as 3 and 4 described as motor room and chopper machine room, which are on the eastern-northern side and facing the Civil Lines road. According to the report, the walls of these rooms were built in mud mortar and were cement painted. The report in that regard reads thus : “Walls are built in mud mortar and cement painted. Mud roof on Brick tiles on Wooden Karries/Wooden Beams in (3) and Kotah Stone over M.S. Tee over wooden karries and R.S.J. Brick flooring. Wooden joinery. C.T.S. Wiring.” Learned counsel has then pointed out the conditions of area marked as bearing tin shed (5) to show that it has C.G.I. sheet roof on M.S. Angle Iron purlins/MS rafters and G1 pipes supports. Learned counsel has also placed reliance on the report with regard to another area marked as 6,7,8,9,10,11, which reads thus “Office (6): Walls built in mud mortar and Cement plastered, Ply wood-Ceiling on Wooden members. Cement plastering to walls and white/colour washing. Steel Door. Cement Concrete floor. Oil painting to steel Door. C.T.S. Wiring. Stores 7 & 8 Walls built in mud

mortar. P.V.C. Sheet on mud roof on Wooden planks over wooden tores/karries over R.S.J./Round Wooden beams. Earthen floors. Shelter for Cycles (9) Walls and Pillar in mud mortar. Mud roof on Brick tiles over Wooden tores and wooden logs. Earthen floor. Tin Shed 10 & 11 (Furnance Sheds) : C.G.I. Sheets on M.S. Angle Iron purlins on Steel trusses/rafters on M.S. Uprights. All the walls are in-tacts, and none is cracked/bulged out. All the roof members are good and sound and no where there was any leakage”.

Learned counsel has maintained that after perusing the report of the Expert which was produced by the tenant petitioners themselves, no reasonable person could conclude that the building in occupation of the tenant petitioner is safe, sound and fit for human habitation. When the matter was before the Appellate Authority on appeal filed by the landlord-respondent, an application was filed by the landlord-respondent for appointment of Local Commissioner for the purposes of finding out as to whether the rooms of the demised premises have further collapsed and accordingly Shri Zora Singh, Advocate, was appointed to visit the site, who submitted his report on 26.9.1997, which is on record of the Appellate Authority along with the site plan. Shri Zora Singh was subjected to close cross-examination when he appeared as CW-1. A reference has then been made to the third report, which came on record on the basis of the order passed by this Court in the instant petition on 24.09.2003, which already finds mention in the preceding paras. It is asserted that two rooms

have disappeared and have collapsed and the debris were removed. Referring to the report, it has been submitted that the inspection was undertaken in the presence of the parties and their counsel. Learned counsel has referred to the report with regard to room No.4 and 5 to submit that those two rooms do not exist at present at the site, which were previously in existence according to the admitted position by both the parties. He has also made a detailed reference to item No.1 to 9 of the report starting from room No. 1 to room No. 12 and argued that the building as a whole has become dilapidated and the same cannot be considered to be fit for human habitation. On the basis of the aforementioned submissions, learned counsel has submitted that according to the definition of expression 'building' as has been given in Section 2(A) of the Act, it would include even the scattered rooms along with the open area. In that regard, he has placed reliance on various judgements rendered by Hon'ble the Supreme Court as well as by this Court, namely, **Des Raj Maheshwari v. Gandhi Memorial Library and another**, 1981(1) RLR 746, **Harish Chandra and another v. Mohd. Ismail and Others**, 1990(2) RLR 546, **Iqbal Hyder v. Mohammed Wazeeruddin**, 2001(2) RLR 123 (A.P.), **Ram Kripal v. Mukat Lal**, 1978(1) RCJ 582, **Ghansham Das v. Debi Prasad and another**, AIR 1966 SC 1998, **Rajeshwari Devi v. S.M. Rabi and others**, 1982(2) RLR 143.

It was then contended that the subsequent events can always be taken into consideration if the condition of the building has deteriorated. He has placed reliance on the judgements in the cases of **Inder Dass v. Hem Raj and Ors**, 1987(2) RCR 476, **Lekh Raj v. Muni Lal and Others**, (2001) 2 SCC 762, **Harnam Singh v. Krishan Kharma and Others**, 1997(1) RLR 459 and **Mangat Ram v. Sant Lal Nagpal**, 1990 (1) RCR 340. Relying upon a judgment of this Court in case of **Sardarni Sampuran Kaur and another v. Sant Singh and another** 1983 (1) RLR 474, it has further been argued that the plea of res judicata as provided by Section 14 of the Act would not be attracted merely because of filing of first application because the second ejectment application was filed in the year 1988 after a gap of more than 5 years and no such plea was raised before the Rent Controller. He has also referred to para 3 at page 30-31 of the record of the Appellate Authority to submit that no rejoinder to the application filed by the landlord-respondent was submitted in which details of material changes in the demised premises were mentioned. Learned counsel has maintained that once no counter-rejoinder is filed then the averments made in Para 3 has to be accepted as correct as has been held in **Salig Ram and another v. Shiv Shankar and Others**, AIR 1971 P&H 437. According to him there is no bar of filing second application as has been held in the cases of **Kuldip Kaur and Others v. Brij Lal**, 1993(1) RLR 465, **Sat Dev v. Sanjeev Garg**, 1990 (2) RCR (Rent) 25, **Hira Lal and**

Ors. v. Ram Parshad, 1991(1) RCR 572, Karam Chand v. Ram Parkash 1981 (2) RCR 299 and Ghanisham Dass and another v. Sobha Singh, 1981 (1) RLR 294.

Counsel for the landlord-respondent has concluded by arguing that no interference in the view taken by the Appellate Authority would be warranted unless the case falls within the parameters culled out by this Court in the case of **Krishan Kumar v. Mukandi Lal, 2003 (1) RLR 675.**

After detail consideration of the rival contentions, examination of record and the judgments delivered by both the Courts below, I am of the view that this petition merits dismissal. The condition of the demised premises as per report dated 19.1.1995 submitted by Shri D.V. Gaur, Executive Engineer, Jagadhri Provincial Division, PWD (B&R), Yamuna Nagar (Ex. A-2), leaves no manner of doubt that the demised premises has been rendered unfit and unsafe for human habitation. Shri D.V. Gaur also appeared as PW-2 in support of his report. According to the report submitted by him (A-2) it has been pointed out that the demised premises were inspected on 6.1.1995 at 11.00 a.m. in the presence of both the parties and after inspecting the premises he declared without entertaining any doubt that the building had become unsafe and unfit for human habitation in totality. He had also mentioned in his report that earlier in 1985, he was appointed as Local Commissioner to inspect the demised premises but at that time some portion of it could not be declared unsafe whereas presently the whole premises had to be declared

unsafe for human habitation. He reiterated the aforementioned opinion when he appeared before the Court as PW-2. In the cross-examination, Shri D.V. Gaur stated that he has not submitted his report pointing out any technical defect but has based his report on the basis of experience and visual inspection. Despite subjecting this witness to a detailed cross-examination, nothing else elicited.

I am further of the opinion that the view expressed by Shri D.V. Gaur is more readily acceptable as compared to the report, dated 7.9.1996, submitted by Shri Hem Chand Goel (Ex. R-1) because Shri Hem Chand Goel is an Overseer and a private engineer. Such like experts tends to lean in favour of the party calling them. Moreover, the report (Ex. R-1) submitted by Mr. Goel fails to take into consideration cracks and/or holes in the walls and roofs. It also ignored the general condition of the roof, tin shed and walls of various rooms. The details of the report as has been rightly pointed out by Mr. V.K. Jain, still supports the case of the landlord-respondent because it repeatedly mention that the walls of various rooms were built in mud mortar and were cement painted. Therefore, it is not possible to accept the conclusion that the building was safe. Moreover, the view taken by Shri D.V. Gaur, who was Executive Engineer at that time, working with PWD (B&R) at Yamunanagar, is whole heartedly supported by the expert appointed by this Court vide order dated 24.9.2003. The report of Shri S.K. Vashishtha, Executive Engineer-cum-Local Commissioner, PWD (B&R), Yamunanagar, dated 15.4.2004,

has been taken on record as Annexure 'A'. It reveals that the expert visited the site on 20.12.2003 at 11.00 a.m. in the presence of a number of persons including both the parties. According to the report, room Nos. 1 and 2 as depicted in the accompanied site plan were without any roof and were also found unfit for human habitation; room Nos. 4 and 5, which previously existed as per the admission made by both the parties, were not in existence at the spot; room No. 7 is a tin shed, which is partly covered and partly not covered; roof of room Nos. 8 and 9 was covered with tarpaulin in order to save leakage of roof on tin shed during rainy season; room No. 10 consists of second class mud roofing; room No. 11 was reinforced brick slab covered with tarpaulin in order to save the roof from rain; and room No. 12 is a tin shed for weighment. It also depicts 26' long western boundary wall totally stands fallen.

In view of the above discussion, I am not left with any doubt that the condition of the demised premises is dilapidated and it is not fit and safe for human habitation within the meaning of Section 13(3)(c) of the Act. In that regard the findings recorded by the learned Appellate Authority deserve to be approved even after ignoring the report of Shri Jora Singh, Advocate, who was appointed as Local Commissioner. The opinion expressed by Shri Jora Singh, Advocate, cannot be taken into consideration because the landlord-respondent in its application filed before this Court for appointment of Local Commissioner has itself doubted the authenticity of the report

submitted by him as is evident from a perusal of order dated 24.9.2003, passed by this Court.

I do not find any merit in the argument that the ejectment petition filed by the landlord-respondent from which the instant petition has emerged, is hit by the principle of *res judicata* as canvassed by learned counsel for the tenant-petitioners because there is wholesome change in the facts and circumstances. In order to raise the plea of *res judicata* an application was filed before the learned Appellate Authority for amendment of the written statement submitted by the tenant-petitioners before the Rent Controller. In reply to the aforementioned application the landlord-respondent has categorically pleaded the change of circumstances in its reply. In that regard, paragraph 3 of the reply submitted by the landlord-respondent would be relevant and the same is extracted below:-

“ 3. That Para No. 3 of the additional pleas of the written statement is also wrong and hence denied. It is absolutely incorrect to suggest that the present application is barred by the principal (principle?) of *resjudicata* as stated in this para. However, it is correct that an earlier application was filed on various grounds including the ground that the building/premises has become unsafe and unfit for human habitation but with the passage of time and due to the change of circumstances and when the present application was filed the major portion

of the building has already fallen down and whole of the building has become unsafe and unfit for human habitation and the same is in dilapidated condition as it is clear from the report of Local Commissioner Shri D.V. Gaur E.E.P.W.D. B & R Yamuna Nagar who has visited the spot on 19.1.95 and has very clearly stated in his report Ex. P.2 that the building is unsafe and unfit for human habitation in totality and he has further stated that he was previously also appointed as Local Commissioner and visited the spot in the year 1985 and at that time some portion of the premises was declared unsafe and as such there is a lot of change in the circumstances in the previous application filed and the present application filed for ejectment. It is again worth while to mention here that now at present before this Hon'ble Court Shri Zora Singh Advocate as L.C. has visited the spot on 25.9.97 and has submitted his report before this Hon'ble Court and as per report of Shri Zora Singh Advocate, the whole of the building is in dilapidated condition and the same has become unsafe and unfit for human habitation. So under the circumstances and due to the passage of time there is lot of change in the previous application filed for ejectment on the ground of unsafe and unfit for human habitation in respect of the premises in question and the present

application on the ground that the building as a whole has become unsafe and unfit for human habitation. Moreover, when the present application was filed for ejectment against the Respondent, the earlier application was pending and the same was not decided on merits at that time. So under the circumstances it is clear that the present application is not barred under the principal (principle?) of resjudicata as stated in this para. So under the circumstances the present application is liable to be accepted with costs and the same may kindly be accepted with costs.”

The aforementioned assertions made by the landlord-respondent were not controverted by the tenant-petitioners in any manner. In fact, these assertions stand further substantiated by the report submitted by Shri S.K. Vashishtha. It also finds substantial support from the report of Shri D.V. Gaur, as already pointed out in the preceding paras. It is well settled that if the averments made in the reply are not controverted then their correctness has to be accepted. In that regard reference may be made to Order VIII Rule 5 of the CPC, which incorporate the principle that '*denial has to be specific*'. In the absence of such specific denial, the averments are deemed to be admitted. For the aforementioned proposition reliance may be placed on a Division Bench judgment of this Court in Salig Ram's case (supra). This Court placing reliance on two judgments of Hon'ble the Supreme Court in the case of

Pandarasannidi v. State of Madras, AIR 1965 SC 1578 and **S.A. Sattar v. Union of India, AIR 1970 SC 479**, has held it to be well settled that replication is part of pleadings and anything stated in the replication specifically for the first time was required to be controverted. It has been further laid down that if it is not controverted then such a plea raised must be held to be conceded. However, without going by admission in the present case, the landlord-respondent has proved the dilapidated condition of the building and it cannot be accepted that there was no change of circumstances for the landlord-respondent to file the second ejectment application, dated 14.12.1988, when a period of five years expired since the filing of first application on 3.9.1983. Hence, the argument that Section 14 of the Act is attracted to the facts of the present case is unsustainable because in the second application, dated 14.12.1988, the issue raised cannot be considered to be substantially the same as has been finally decided in the earlier proceedings, which emanated from the application dated 3.9.1983. The judgment in Karam Chand's case (supra), on which reliance has been placed by learned counsel for the tenant-petitioners would not be applicable because in that case the earlier ejectment petition filed by the landlord took the ground of non-payment of rent and the personal necessity. The ejectment petition was dismissed and the second application was found to be based on the same cause of action and, therefore, the Court by invoking Section 14 of the Act, dismissed the ejectment petition. Even in Ghanisham Dass's

case (supra) it was found that there was no change of circumstances which might have warranted filing of a fresh application on the ground that the building had become unsafe and unfit for human habitation. Whereas in the present case changed facts have been pleaded and proved in detail. I am further of the view that it would not result into any material difference if the earlier findings recorded in the ejectment petition filed in 1983 have attained finality by virtue of its affirmation by the learned Appellate Authority and then withdrawal of Civil Revision No. 722 of 1993 before this Court by the landlord-respondent on 4.7.2007.

The other judgments that collapsing of roof or appearance of cracks would not constitute sufficient basis to conclude that the building has become unfit and unsafe for human habitation, also do not require any detailed consideration because in the instant case the facts are entirely different. Moreover, it is well settled that subsequent events can always be taken into consideration if the condition has deteriorated to the extent that it has become dilapidated, unsafe and unfit for human habitation. The bar created by Section 14 of the Act would not be attracted and subsequent factors can always be taken into account as has been held by Hon'ble the Supreme Court and this Court in the cases of Inder Dass (supra), Lekh Raj (supra), Harnam Singh (supra), Mangat Ram (supra) and Sardarni Sampuran Kaur (supra). In Lekh Raj's case (supra), Hon'ble the Supreme Court has emphasised that subsequent events should always be

permitted to be brought on record if it render justice to a party and the Court should always interpret the law not in derogation of justice but in its aid. There is substantial support available to the case of the landlord-respondent from the judgment of this Court in Inder Dass's case (*supra*) wherein it has been held that second application for ejectment of tenant on the ground that building had become unsafe and unfit for human habitation cannot be rejected by invoking Section 14 of the Act after it has been proved that substantial part of the building was rendered unsafe and unfit for human habitation.

In the light of the above discussion, I reject the argument raised by learned counsel for the tenant-petitioners that the plea of *res judicata* as envisaged by Section 14 of the Act was applicable or that the subsequent petition filed by the landlord-respondent was actuated by mala fide.

For the reasons aforementioned, this petition fails and the same is dismissed with costs, which are assessed at Rs. 10,000/-. However, tenant-petitioners are granted four months time from today to vacate the premises and hand over its vacant possession to the landlord-respondent

The office is directed to send back the record of the Courts below immediately.

(M.M. KUMAR)

August 20, 2007
JUDGE
Pkapoor/Amit

FIT FOR INDEXING.